

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIET MIKE NGO,	)	No. C 04-1627 JF (PR)
Petitioner,	)	ORDER TO SHOW CAUSE
vs.	)	
J. SOLIS, Warden,	)	
Respondent.	)	

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Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his liberty interest in parole. Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

**STATEMENT**

In 1989, Petitioner was sentenced to seventeen years-to-life in state prison after his second degree murder conviction in Santa Clara Superior Court. Petitioner alleges that a negative Life Prisoner Evaluation report was prepared in conjunction with his Board of Prison Terms' parole hearing and subsequent denial of parole. Petitioner maintains that this negative report was issued in retaliation for his exercising his First Amendment rights

1 in filing civil rights complaints, writs and grievances at San Quentin and Avenal State  
2 Prison. Petitioner requests that this negative report be expunged from his central prison  
3 file. Petitioner filed state habeas petitions in the state superior court, appellate court, and  
4 supreme court. All of these petitions were denied as of March 30, 2004. Petitioner filed  
5 the instant federal habeas petition on April 26, 2004.

## 6 **DISCUSSION**

### 7 **A. Standard of Review**

8 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
9 in custody pursuant to the judgment of a state court only on the ground that he is in  
10 custody in violation of the Constitution or laws or treaties of the United States.” 28  
11 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

12 A district court shall “award the writ or issue an order directing the respondent to  
13 show cause why the writ should not be granted, unless it appears from the application that  
14 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

### 15 **B. Petitioner’s Claim**

16 As grounds for federal habeas relief, Petitioner alleges that: (1) he has a limited  
17 constitutional right to have incorrect information expunged from his record; (2) he has a  
18 protected liberty interest in parole that has been violated by the use of uncorroborated and  
19 erroneous information in a Life Prisoner Evaluation Report prepared in conjunction with  
20 the Board of Prison Terms’ parole suitability hearing. This negative report was issue in  
21 retaliation for Petitioner’s exercise of his First Amendment rights in filing civil rights  
22 complaints, writs and grievances during his incarceration at San Quentin State Prison and  
23 Avenal State Prison; and (3) his Due Process and First Amendment rights have been  
24 violated by a pattern of retaliation for the lawful exercise of his right to file grievances  
25 and lawsuits. This negative Life Prisoner Evaluation Report prepared at Avenal State  
26 Prison was another incident of retaliation against Petitioner which culminated in his  
27 transfer after staff at Avenal State Prison threatened his life. Petitioner requests that this  
28 negative report be expunged from his Central file.

1 Liberally construed, Petitioner's allegations are sufficient to require a response.

2 **CONCLUSION**

3 1. The Clerk shall serve by mail a copy of this order and the petition  
4 and all attachments thereto upon the Respondent and the Respondent's attorney, the  
5 Attorney General of the State of California. The Clerk shall also serve a copy of this  
6 order on the Petitioner.

7 2. Respondent shall file with the Court and serve on Petitioner, within **sixty**  
8 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
9 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
10 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of  
11 all portions of the state parole record, and any supporting documentation that is relevant  
12 to a determination of the issues presented by the petition.

13 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
14 with the Court and serving it on Respondent within **thirty days** of his receipt of the  
15 answer.

16 3. Respondent may file a motion to dismiss on procedural grounds in lieu of  
17 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
18 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
19 with the Court and serve on Respondent an opposition or statement of non-opposition  
20 within **thirty days** of receipt of the motion, and Respondent shall file with the court and  
21 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

22 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
23 that all communications with the Court must be served on respondent by mailing a true  
24 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
25 parties informed of any change of address by filing a separate paper captioned "Notice of  
26 Change of Address."

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1 He must comply with the Court's orders in a timely fashion. Failure to do so may result  
2 in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
3 Procedure 41(b).

4 IT IS SO ORDERED.

5 DATED: 9/30/06

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Viet Mike Ngo  
3 E-21895  
4 CTF - Soledad  
5 P.O. Box 689  
6 Soledad, CA 93960-0689

7 CA State Attorney General's Office  
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